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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

**Sergio Lopez and Javier Garcia,**  
individually, and on behalf of all others  
similarly situated,

Plaintiff,

v.

**PT Noodles Holdings, Inc.,** an Arizona  
Corporation;  
**PT Noodles LLC,** an Arizona Limited  
Liability Company;  
**PT Noodles II LLC,** an Arizona Limited  
Liability Company;  
**PT Noodles III LLC,** an Arizona Limited  
Liability Company;  
**PT Noodles IV LLC,** an Arizona Limited  
Liability Company;  
**PT Noodles V LLC,** an Arizona Limited  
Liability Company;  
**PT Noodles VI LLC,** an Arizona Limited  
Liability Company;  
**PT Noodles VII LLC,** an Arizona  
Limited Liability Company;  
**PT Noodles VIII LLC,** an Arizona  
Limited Liability Company;  
**PT Noodles IX LLC,** an Arizona Limited  
Liability Company;  
**PT Noodles X LLC,** an Arizona Limited  
Liability Company;  
**PT Noodles-Peoria LLC,** an Arizona  
Limited Liability Company;  
**PT Pho Express LLC,** an Arizona  
Limited Liability Company;  
**PT Pho Express 2 LLC,** an Arizona  
Limited Liability Company;

No. \_\_\_\_\_

**COLLECTIVE ACTION  
COMPLAINT PURSUANT TO 29  
U.S.C. § 201, ET SEQ.**

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**Tien Thanh Nguyen and Jane Doe  
Nguyen**, a Married Couple; and  
**Wi Nguyen and Jane Doe Nguyen II**, a  
Married Couple,

Defendants.

Plaintiffs, Sergio Lopez and Javier Garcia (“Plaintiffs”), individually, and on  
behalf of all other persons similarly situated, alleges as follows:

**PRELIMINARY STATEMENT**

1. Plaintiffs bring this action on behalf of themselves and all similarly-situated  
current and former Hourly Workers and Supervisors<sup>1</sup> of Defendants PT Noodles  
Holdings, Inc.; PT Noodles LLC; PT Noodles II LLC; PT Noodles III LLC; PT Noodles  
IV LLC; PT Noodles V LLC; PT Noodles VI LLC; PT Noodles VII LLC; PT Noodles  
VIII LLC; PT Noodles IX LLC; PT Noodles X LLC; PT Noodles-Peoria LLC; PT Pho  
Express LLC; IPT Pho Express II LLC; Tien Thanh Nguyen and Jane Doe Nguyen; and  
Wi Nguyen and Jane Doe Nguyen II<sup>2</sup> who were not compensated at a rate of one and  
one-half times their regular rates of pay for hours they worked in excess of 40 in a given  
workweek.

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<sup>1</sup> For the purposes of this Complaint, “Hourly Workers” and “Supervisors” are  
exclusively titles used for the purpose of classifying the two putative sub-classes of  
similarly situated individuals, is not necessarily the job title of Plaintiffs or the putative  
subclasses—which includes dishwashers, kitchen prep workers, line cooks, cashiers, and  
supervisors, whether paid an hourly or weekly rate—, and has no bearing or relation to any  
specialization, skill, education, training, or other qualification that might otherwise be  
associated with such a job title.

<sup>2</sup> All Defendants to this action are collectively referred to as either “PT Noodles” or  
“Defendants” unless specified otherwise.

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1           2.       Plaintiffs, individually, and on behalf of all others similarly situated, bring  
2 this action against Defendants for their unlawful failure to pay overtime in violation of  
3 the Fair Labor Standards Act, 29 U.S.C. § 201-219 (the “FLSA”).

4           3.       Plaintiffs bring a collective action under the FLSA to recover the unpaid  
5 overtime owed to them individually and on behalf of all other similarly situated  
6 employees, current and former, of Defendants. Members of the Collective Action are  
7 referred to as the “Collective Members.”

8           4.       The Collective Members are all current and former Hourly Workers and/or  
9 Supervisors who were employed by Defendants at any time starting three years before  
10 this Complaint was filed, up to the present.

11           5.       This is an action for unpaid wages, liquidated damages, interest, attorneys’  
12 fees, and costs under the FLSA.

13           6.       The FLSA was enacted “to protect all covered workers from substandard  
14 wages and oppressive working hours.” Under the FLSA, employers must pay all non-  
15 exempt employees an overtime premium for all time spent working in excess of 40 hours  
16 per week.

17           7.       Defendants engaged in the regular policy and practice of subjecting  
18 Plaintiffs and the Collective Members to their policy and practice of failing and/or  
19 refusing to pay them overtime for time they worked in excess of 40 hours per week, in  
20 violation of 29 U.S.C. § 207(a).

21           8.       Therefore, Defendants did not pay Plaintiffs or the Collective Members the  
22 applicable overtime rate, in violation of 29 U.S.C. § 207.

**JURISDICTION AND VENUE**

9. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 201, *et seq.* because this action arises under the Constitution and laws of the United States.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) because acts giving rise to the claims of Plaintiffs and the Collective Members occurred within the District of Arizona, and Defendants regularly conduct business in and have engaged in the conduct alleged in the Complaint – and, thus, are subject to personal jurisdiction in – this judicial district.

**PARTIES**

12. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

13. At all times material to the matters alleged in this Complaint, Plaintiffs are individuals residing in Maricopa County, Arizona, and have been employees of Defendants.

14. At all material times, Plaintiff Sergio Lopez was a full-time, non-exempt employee of Defendants who worked for Defendants from approximately January 2019 through Approximately June 2019.

15. At all material times, Plaintiff Sergio Lopez was employed by Defendants as a cook earning an hourly rate of pay.

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1           16.     At all material times, Defendants employed Plaintiff Sergio Lopez to  
2 perform various “back-of-house” kitchen-related labor.

3           17.     At all material times, Plaintiff Sergio Lopez was an employee of  
4 Defendants as defined by the FLSA, 29 U.S.C. § 203(e)(1) and was a non-exempt  
5 employee under 29 U.S.C. § 213(a)(1).  
6

7           18.     At all material times, Plaintiff Javier Garcia was a full-time, non-exempt  
8 employee of Defendants who worked for Defendants from approximately September  
9 2017 through approximately February 2020.  
10

11           19.     At all material times, Plaintiff Javier Garcia was employed by Defendants  
12 as a cook and/or a supervisor.

13           20.     From the beginning of his employment with Defendants through  
14 approximately July 2019, Plaintiff Javier Garcia worked for Defendants as a cook earning  
15 an hourly rate of pay.  
16

17           21.     From approximately July 2019 through approximately February 2020,  
18 Plaintiff Javier Garcia worked for Defendants as a supervisor earning a weekly rate of  
19 pay.  
20

21           22.     At all material times, Defendants employed Plaintiff Javier Garcia to  
22 perform various “back-of-house” kitchen-related labor.

23           23.     At all material times, Plaintiff Javier Garcia was an employee of  
24 Defendants as defined by the FLSA, 29 U.S.C. § 203(e)(1) and was a non-exempt  
25 employee under 29 U.S.C. § 213(a)(1).  
26  
27

1           24. Plaintiffs have given their written consent to be party Plaintiffs in this  
2 action pursuant to 29 U.S.C. § 216(b), a true and accurate copy of which is attached to  
3 this Complaint as “**Exhibit A.**”

4           25. Plaintiffs bring this action on behalf of themselves and on behalf of all  
5 other persons similarly situated who are current or former Hourly Workers or Supervisors  
6 of Defendants, including but not limited to Hourly Workers or Supervisors who agree in  
7 writing to join this action seeking recovery under the FLSA.  
8

9           26. Plaintiffs bring this action on behalf of themselves and on behalf of all  
10 other similarly situated current and former employees of Defendants—specifically, Hourly  
11 Workers or Supervisors who were not paid overtime for time worked in excess of 40  
12 hours in a given workweek and whose wages, therefore, were non-compliant with the  
13 FLSA.  
14

15           27. Defendant PT Noodles Holdings, Inc. is an Arizona corporation, authorized  
16 to do business in the State of Arizona and is at all relevant times Plaintiffs’ and the  
17 Collective Members’ employer as defined by 29 U.S.C. § 203(d).  
18

19           28. Under the FLSA, PT Noodles Holdings, Inc. is an employer. The FLSA  
20 defines “employer” as any person who acts directly or indirectly in the interest of an  
21 employer in relation to an employee. At all relevant times, Defendant PT Noodles  
22 Holdings, Inc. had the authority to hire and fire employees, supervised and controlled  
23 work schedules or the conditions of employment, determined the rate and method of  
24 payment, and maintained employment records in connection with Plaintiffs’ and the  
25 Collective Members’ employment with Defendants. As a person who acted in the  
26  
27

1 interest of Defendants in relation to the company's employees, PT Noodles Holdings,  
2 Inc. is subject to liability under the FLSA.

3 29. Defendant PT Noodles LLC is an Arizona limited liability company,  
4 authorized to do business in the State of Arizona and is at all relevant times Plaintiffs'  
5 and the Collective Members' employer as defined by 29 U.S.C. § 203(d).  
6

7 30. Under the FLSA, Defendant PT Noodles LLC is an employer. The FLSA  
8 defines "employer" as any person who acts directly or indirectly in the interest of an  
9 employer in relation to an employee. At all relevant times, Defendant PT Noodles LLC  
10 had the authority to hire and fire employees, supervised and controlled work schedules or  
11 the conditions of employment, determined the rate and method of payment, and  
12 maintained employment records in connection with Plaintiffs' and the Collective  
13 Members' employment with Defendants. As a person who acted in the interest of  
14 Defendants in relation to the company's employees, PT Noodles LLC is subject to  
15 liability under the FLSA.  
16  
17

18 31. Defendant PT Noodles II LLC is an Arizona limited liability company,  
19 authorized to do business in the State of Arizona and is at all relevant times Plaintiffs'  
20 and the Collective Members' employer as defined by 29 U.S.C. § 203(d).  
21

22 32. Under the FLSA, Defendant PT Noodles II LLC is an employer. The  
23 FLSA defines "employer" as any person who acts directly or indirectly in the interest of  
24 an employer in relation to an employee. At all relevant times, Defendant PT Noodles II  
25 LLC had the authority to hire and fire employees, supervised and controlled work  
26 schedules or the conditions of employment, determined the rate and method of payment,  
27

1 and maintained employment records in connection with Plaintiffs' and the Collective  
2 Members' employment with Defendants. As a person who acted in the interest of  
3 Defendants in relation to the company's employees, PT Noodles II LLC is subject to  
4 liability under the FLSA.

5  
6 33. Defendant PT Noodles III LLC is an Arizona limited liability company,  
7 authorized to do business in the State of Arizona and is at all relevant times Plaintiffs'  
8 and the Collective Members' employer as defined by 29 U.S.C. § 203(d).

9  
10 34. Under the FLSA, Defendant PT Noodles III LLC is an employer. The  
11 FLSA defines "employer" as any person who acts directly or indirectly in the interest of  
12 an employer in relation to an employee. At all relevant times, Defendant PT Noodles III  
13 LLC had the authority to hire and fire employees, supervised and controlled work  
14 schedules or the conditions of employment, determined the rate and method of payment,  
15 and maintained employment records in connection with Plaintiffs' and the Collective  
16 Members' employment with Defendants. As a person who acted in the interest of  
17 Defendants in relation to the company's employees, PT Noodles III LLC is subject to  
18 liability under the FLSA.

19  
20  
21 35. Defendant PT Noodles IV LLC is an Arizona limited liability company,  
22 authorized to do business in the State of Arizona and is at all relevant times Plaintiffs'  
23 and the Collective Members' employer as defined by 29 U.S.C. § 203(d).

24  
25 36. Under the FLSA, Defendant PT Noodles IV LLC is an employer. The  
26 FLSA defines "employer" as any person who acts directly or indirectly in the interest of  
27 an employer in relation to an employee. At all relevant times, Defendant PT Noodles IV



1 LLC had the authority to hire and fire employees, supervised and controlled work  
2 schedules or the conditions of employment, determined the rate and method of payment,  
3 and maintained employment records in connection with Plaintiffs' and the Collective  
4 Members' employment with Defendants. As a person who acted in the interest of  
5 Defendants in relation to the company's employees, PT Noodles IV LLC is subject to  
6 liability under the FLSA.  
7

8 37. Defendant PT Noodles V LLC is an Arizona limited liability company,  
9 authorized to do business in the State of Arizona and is at all relevant times Plaintiffs'  
10 and the Collective Members' employer as defined by 29 U.S.C. § 203(d).  
11

12 38. Under the FLSA, Defendant PT Noodles V LLC is an employer. The  
13 FLSA defines "employer" as any person who acts directly or indirectly in the interest of  
14 an employer in relation to an employee. At all relevant times, Defendant PT Noodles V  
15 LLC had the authority to hire and fire employees, supervised and controlled work  
16 schedules or the conditions of employment, determined the rate and method of payment,  
17 and maintained employment records in connection with Plaintiffs' and the Collective  
18 Members' employment with Defendants. As a person who acted in the interest of  
19 Defendants in relation to the company's employees, PT Noodles V LLC is subject to  
20 liability under the FLSA.  
21

22 39. Defendant PT Noodles VI LLC is an Arizona limited liability company,  
23 authorized to do business in the State of Arizona and is at all relevant times Plaintiffs'  
24 and the Collective Members' employer as defined by 29 U.S.C. § 203(d).  
25  
26  
27

1           40. Under the FLSA, Defendant PT Noodles VI LLC is an employer. The  
2 FLSA defines “employer” as any person who acts directly or indirectly in the interest of  
3 an employer in relation to an employee. At all relevant times, Defendant PT Noodles VI  
4 LLC had the authority to hire and fire employees, supervised and controlled work  
5 schedules or the conditions of employment, determined the rate and method of payment,  
6 and maintained employment records in connection with Plaintiffs’ and the Collective  
7 Members’ employment with Defendants. As a person who acted in the interest of  
8 Defendants in relation to the company’s employees, PT Noodles VI LLC is subject to  
9 liability under the FLSA.  
10

11  
12           41. Defendant PT Noodles VII LLC is an Arizona limited liability company,  
13 authorized to do business in the State of Arizona and is at all relevant times Plaintiffs’  
14 and the Collective Members’ employer as defined by 29 U.S.C. § 203(d).  
15

16           42. Under the FLSA, Defendant PT Noodles VII LLC is an employer. The  
17 FLSA defines “employer” as any person who acts directly or indirectly in the interest of  
18 an employer in relation to an employee. At all relevant times, Defendant PT Noodles VII  
19 LLC had the authority to hire and fire employees, supervised and controlled work  
20 schedules or the conditions of employment, determined the rate and method of payment,  
21 and maintained employment records in connection with Plaintiffs’ and the Collective  
22 Members’ employment with Defendants. As a person who acted in the interest of  
23 Defendants in relation to the company’s employees, PT Noodles VII LLC is subject to  
24 liability under the FLSA.  
25  
26  
27

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1           43. Defendant PT Noodles VIII LLC is an Arizona limited liability company,  
2 authorized to do business in the State of Arizona and is at all relevant times Plaintiffs'  
3 and the Collective Members' employer as defined by 29 U.S.C. § 203(d).

4           44. Under the FLSA, Defendant PT Noodles VIII LLC is an employer. The  
5 FLSA defines "employer" as any person who acts directly or indirectly in the interest of  
6 an employer in relation to an employee. At all relevant times, Defendant PT Noodles  
7 VIII LLC had the authority to hire and fire employees, supervised and controlled work  
8 schedules or the conditions of employment, determined the rate and method of payment,  
9 and maintained employment records in connection with Plaintiffs' and the Collective  
10 Members' employment with Defendants. As a person who acted in the interest of  
11 Defendants in relation to the company's employees, PT Noodles VIII LLC is subject to  
12 liability under the FLSA.

13           45. Defendant PT Noodles IX LLC is an Arizona limited liability company,  
14 authorized to do business in the State of Arizona and is at all relevant times Plaintiffs'  
15 and the Collective Members' employer as defined by 29 U.S.C. § 203(d).

16           46. Under the FLSA, Defendant PT Noodles IX LLC is an employer. The  
17 FLSA defines "employer" as any person who acts directly or indirectly in the interest of  
18 an employer in relation to an employee. At all relevant times, Defendant PT Noodles IX  
19 LLC had the authority to hire and fire employees, supervised and controlled work  
20 schedules or the conditions of employment, determined the rate and method of payment,  
21 and maintained employment records in connection with Plaintiffs' and the Collective  
22 Members' employment with Defendants. As a person who acted in the interest of  
23  
24  
25  
26  
27

1 Defendants in relation to the company's employees, PT Noodles IX LLC is subject to  
2 liability under the FLSA.

3 47. Defendant PT Noodles X LLC is an Arizona limited liability company,  
4 authorized to do business in the State of Arizona and is at all relevant times Plaintiffs'  
5 and the Collective Members' employer as defined by 29 U.S.C. § 203(d).  
6

7 48. Under the FLSA, Defendant PT Noodles X LLC is an employer. The  
8 FLSA defines "employer" as any person who acts directly or indirectly in the interest of  
9 an employer in relation to an employee. At all relevant times, Defendant PT Noodles X  
10 LLC had the authority to hire and fire employees, supervised and controlled work  
11 schedules or the conditions of employment, determined the rate and method of payment,  
12 and maintained employment records in connection with Plaintiffs' and the Collective  
13 Members' employment with Defendants. As a person who acted in the interest of  
14 Defendants in relation to the company's employees, PT Noodles X LLC is subject to  
15 liability under the FLSA.  
16  
17

18 49. Defendant PT Noodles-Peoria LLC is an Arizona limited liability company,  
19 authorized to do business in the State of Arizona and is at all relevant times Plaintiffs'  
20 and the Collective Members' employer as defined by 29 U.S.C. § 203(d).  
21

22 50. Under the FLSA, Defendant PT Noodles-Peoria X LLC is an employer.  
23 The FLSA defines "employer" as any person who acts directly or indirectly in the interest  
24 of an employer in relation to an employee. At all relevant times, Defendant PT Noodles-  
25 Peoria X LLC had the authority to hire and fire employees, supervised and controlled  
26 work schedules or the conditions of employment, determined the rate and method of  
27

1 payment, and maintained employment records in connection with Plaintiffs' and the  
2 Collective Members' employment with Defendants. As a person who acted in the  
3 interest of Defendants in relation to the company's employees, PT Noodles-Peoria X  
4 LLC is subject to liability under the FLSA.

5  
6 51. Defendant PT Pho Express LLC is an Arizona limited liability company,  
7 authorized to do business in the State of Arizona and is at all relevant times Plaintiffs'  
8 and the Collective Members' employer as defined by 29 U.S.C. § 203(d).

9  
10 52. Under the FLSA, Defendant PT Pho Express LLC is an employer. The  
11 FLSA defines "employer" as any person who acts directly or indirectly in the interest of  
12 an employer in relation to an employee. At all relevant times, Defendant PT Pho Express  
13 LLC had the authority to hire and fire employees, supervised and controlled work  
14 schedules or the conditions of employment, determined the rate and method of payment,  
15 and maintained employment records in connection with Plaintiffs' and the Collective  
16 Members' employment with Defendants. As a person who acted in the interest of  
17 Defendants in relation to the company's employees, PT Pho Express LLC is subject to  
18 liability under the FLSA.

19  
20  
21 53. Defendant PT Pho Express 2 LLC is an Arizona limited liability company,  
22 authorized to do business in the State of Arizona and is at all relevant times Plaintiffs'  
23 and the Collective Members' employer as defined by 29 U.S.C. § 203(d).

24  
25 54. Under the FLSA, Defendant PT Pho Express 2 LLC is an employer. The  
26 FLSA defines "employer" as any person who acts directly or indirectly in the interest of  
27 an employer in relation to an employee. At all relevant times, Defendant PT Pho Express

1 2 LLC had the authority to hire and fire employees, supervised and controlled work  
2 schedules or the conditions of employment, determined the rate and method of payment,  
3 and maintained employment records in connection with Plaintiffs' and the Collective  
4 Members' employment with Defendants. As a person who acted in the interest of  
5 Defendants in relation to the company's employees, PT Pho Express 2 LLC is subject to  
6 liability under the FLSA.  
7

8 55. Defendant Tien Thanh Nguyen and Jane Doe Nguyen are, upon  
9 information and belief, husband and wife. They have caused events to take place giving  
10 rise to the claims in this Complaint as to which their marital community is fully liable.  
11 Tien Thanh Nguyen and Jane Doe Nguyen are owners of PT Noodles, and were at all  
12 relevant times Plaintiffs' and the Collective Members' employer as defined by the FLSA,  
13 29 U.S.C. § 203(d).  
14

15 56. Under the FLSA, Defendants Tien Thanh Nguyen and Jane Doe Nguyen  
16 are employers. The FLSA defines "employer" as any individual who acts directly or  
17 indirectly in the interest of an employer in relation to an employee. Tien Thanh Nguyen  
18 and Jane Doe Nguyen are the owners of PT Noodles. At all relevant times, they had the  
19 authority to hire and fire employees, supervised and controlled work schedules or the  
20 conditions of employment, determined the rate and method of payment, and maintained  
21 employment records in connection with Plaintiffs' and the Collective Members'  
22 employment with Defendants. As persons who acted in the interest of Defendants in  
23 relation to the company's employees, Tien Thanh Nguyen and Jane Doe Nguyen are  
24 subject to individual liability under the FLSA.  
25  
26  
27

1           57. Defendant Wi Nguyen and Jane Doe Nguyen II are, upon information and  
2 belief, husband and wife. They have caused events to take place giving rise to the claims  
3 in this Complaint as to which their marital community is fully liable. Wi Nguyen and  
4 Jane Doe Nguyen II are owners of PT Noodles, and were at all relevant times Plaintiffs'  
5 and the Collective Members' employer as defined by the FLSA, 29 U.S.C. § 203(d).  
6

7           58. Under the FLSA, Defendants Wi Nguyen and Jane Doe Nguyen II are  
8 employers. The FLSA defines "employer" as any individual who acts directly or  
9 indirectly in the interest of an employer in relation to an employee. Wi Nguyen and Jane  
10 Doe Nguyen II are the owners of PT Noodles. At all relevant times, they had the  
11 authority to hire and fire employees, supervised and controlled work schedules or the  
12 conditions of employment, determined the rate and method of payment, and maintained  
13 employment records in connection with Plaintiffs' and the Collective Members'  
14 employment with Defendants. As persons who acted in the interest of Defendants in  
15 relation to the company's employees, Wi Nguyen and Jane Doe Nguyen II are subject to  
16 individual liability under the FLSA.  
17

18  
19           59. Plaintiffs are further informed, believe, and therefore allege that each of the  
20 Defendants gave consent to, ratified, and authorized the acts of all other Defendants, as  
21 alleged in this Complaint.  
22

23           60. Defendants, and each of them, are sued in both their individual and  
24 corporate capacities.  
25

26           61. Defendants are jointly and severally liable for the injuries and damages  
27 sustained by Plaintiffs and the Collective Members.

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1           62. At all relevant times, Plaintiffs and the Collective Members were  
2 “employees” of Defendants as defined by the FLSA, 29 U.S.C. § 201, *et seq.*

3           63. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to  
4 Defendants.

5           64. At all relevant times, Defendants were and continue to be “employers” as  
6 defined by FLSA, 29 U.S.C. § 201, *et seq.*

7           65. Defendants individually and/or through an enterprise or agent, directed and  
8 exercised control over Plaintiffs’ and the Collective Members’ work and wages at all  
9 relevant times.  
10

11           66. At all relevant times, Plaintiffs and the Collective Members, in their work  
12 for Defendants, were engaged in commerce or the production of goods for commerce.  
13

14           67. At all relevant times, Plaintiffs and the Collective Members, in their work  
15 for Defendants, were employed by an enterprise engaged in commerce that had annual  
16 gross sales of at least \$500,000.  
17

18           68. At all relevant times, all Defendants were joint employers of Plaintiffs and  
19 the Collective Members. At all relevant times: (1) Defendants were not completely  
20 disassociated with respect to the employment of Plaintiffs and the Collective Members;  
21 and (2) Defendants were under common control. In any event, at all relevant times,  
22 Defendants were joint employers under the FLSA and 29 C.F.R. § 791.2(b) and  
23 employed Plaintiffs and the Collective Members.  
24

25           69. Further, at all relevant times, Defendants have operated as a “single  
26 enterprise” within the meaning of the FLSA, 29 U.S.C. § 203(r)(1). That is, Defendants  
27



1 perform related activities through unified operation and common control for a common  
 2 business purpose. *See Brennan v. Arnheim and Neely, Inc.*, 410 U.S. 512, 515 (1973);  
 3 *Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 914-15 (9th Cir. 2003).

4 70. Defendants operate a chain of restaurants under the assumed name “PT  
 5 Noodles” and “PT Pho Express.” They advertise themselves as such on their website.  
 6

7 71. Defendants represent themselves to the general public as one restaurant  
 8 company operating at multiple locations. They share employees, have a common  
 9 management, have a common ownership, pool their resources, operate from the same  
 10 headquarters, share common statutory agents, and have the same owner. This is a family  
 11 of restaurants that advertises together on the same website, provides the same array of  
 12 products and services to its customers, and uses the same business model. This family of  
 13 restaurants provides the same service product to its customers by using a set formula  
 14 when conducting its business. Part of that set formula is the wage violations alleged in  
 15 this Complaint. These facts represent a classic example of “corporate fragmentation.”  
 16  
 17

18 72. Defendants’ joint business purpose is to own and manage a chain of  
 19 Vietnamese restaurants.  
 20

### 21 **INDIVIDUAL AND COLLECTIVE FACTUAL ALLEGATIONS**

22 73. Plaintiffs reallege and incorporate by reference all allegations in all  
 23 preceding paragraphs.

24 74. Defendants operate a chain of Vietnamese restaurants called “PT Noodles”  
 25 and “PT Pho Express.”  
 26  
 27

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1           75. At all relevant times, Defendants have employed Hourly Workers to  
2 perform front of house, back of house, serving, busing, kitchen prep, cashier,  
3 dishwashing, and prep cook-related duties at hourly rates of pay for such work  
4 performed.

5  
6           76. At all relevant times, Defendants have employed Supervisors to perform  
7 both front of house and back of house duties, sometimes with limited supervisory  
8 authority, cooking, prepping food, cleaning the restaurant, and training other workers, at  
9 weekly rates of pay for such work performed.

10  
11           77. At all relevant times, Defendants have operated pursuant to a policy and  
12 practice of not paying an overtime premium—one and one-half times the regular hourly  
13 rate of pay—to their Hourly Workers and/or Supervisors for time they spend working in  
14 excess of 40 hours in a given workweek.

15  
16           78. At all relevant times, Defendants required some or all of their Hourly  
17 Workers and/or Supervisors to sign contracts agreeing to forego overtime pay for time  
18 worked in excess of 40 hours in a given workweek.

19  
20           79. During his time working for Defendants, Plaintiff Sergio Lopez worked  
21 primarily for PT Pho Express restaurant, located at 16995 North 75<sup>th</sup> Avenue, Suite 105,  
22 Phoenix, AZ 85382.

23           80. During his time working for Defendants, Plaintiff Javier Garcia worked  
24 both PT Noodles and PT Pho Express.

25           81. Specifically, during his time working for Defendants, Plaintiff Javier  
26 Garcia worked for the PT Noodles Avondale, located at 10220 West McDowell Road,  
27

1 Suite 150, Avondale, AZ 85392; PT Noodles Goodyear, located at 1375 North Litchfield  
2 Road, Suite 101, Goodyear, AZ 85395; the PT Noodles Buckeye, located at 940 South  
3 Watson Road, Suite 102, Buckeye, AZ 85326; and the PT Pho Express Bell, located at  
4 16995 North 75<sup>th</sup> Avenue, Suite 105, Phoenix, AZ 85382.

5  
6 82. At all relevant times, Plaintiffs generally worked in excess of 40 hours in a  
7 given workweek for Defendants without receiving one and one-half times their regular  
8 rates of pay.

9  
10 83. For example, during the biweekly pay period of May 12, 2019 through May  
11 25, 2019, Plaintiff Sergio Lopez worked a total of 118.5 hours for Defendants at the flat  
12 rate of \$13.00 per hour for all hours worked, including time spent working in excess of  
13 40 hours in a given workweek.

14  
15 84. For example, during the biweekly pay period of May 26, 2019 through June  
16 8, 2019, Plaintiff Sergio Lopez worked a total of 112.5 hours for Defendants at the flat  
17 rate of \$13.00 per hour for all hours worked, including time spent working in excess of  
18 40 hours in a given workweek.

19  
20 85. For example, during the biweekly pay period of October 14, 2018 through  
21 October 27, 2018, Plaintiff Javier Garcia worked a total of 132.98 hours for Defendants  
22 at the flat rate of \$14.00 per hour for all hours worked, including time spent working in  
23 excess of 40 hours in a given workweek.

24  
25 86. For example, during the biweekly pay period of October 28, 2018 through  
26 November 10, 2018, Plaintiff Javier Garcia worked a total of 130.98 hours for  
27

1 Defendants at the flat rate of \$14.00 per hour for all hours worked, including time spent  
2 working in excess of 40 hours in a given workweek.

3 87. At all relevant times, Plaintiffs and the Collective Members, collectively,  
4 have performed work at the each and every of Defendants' PT Noodles and PT Pho  
5 Express locations.  
6

7 88. At all relevant times, Defendants have employed Plaintiffs and the Hourly  
8 Workers to perform either "front of house" or "back of house" duties, generally at hourly  
9 rates of pay, for such work performed.  
10

11 89. At all relevant times, Defendants have employed Plaintiffs and the  
12 Supervisors to perform "front of house" or "back of house" duties, with limited  
13 supervisory authority, generally at weekly rates of pay, for such work performed.  
14

15 90. At all relevant times, Defendants did not pay Plaintiffs or the Collective  
16 Members one- and one-half times their regular rates of pay for time spent working in  
17 excess of 40 hours in a given workweek.

18 91. Plaintiffs and the Collective Members are and were non-exempt employees.

19 92. From the beginning of Plaintiffs' and the Collective Members' employment  
20 through the present day, Defendants failed to properly compensate Plaintiffs and the  
21 Collective Members for any of their overtime hours. During this time, Plaintiffs and the  
22 Collective Members generally worked between approximately fifty (50) and seventy (70)  
23 or more hours per given workweek.  
24  
25  
26  
27

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1           93.    At all relevant times, Plaintiffs and the Collective Members were paid  
2 exclusively at their regular rate of pay and were never paid overtime for time they  
3 worked in excess of 40 hours in a given workweek.

4           94.    Such conduct on the part of Defendants violated the FLSA, 29 U.S.C. §  
5 207(a).  
6

7           95.    At all relevant times, Plaintiffs and the Hourly Workers were not paid on a  
8 salary basis.

9           96.    At all relevant times, Plaintiffs and the Hourly Workers were not managers.  
10

11           97.    At all relevant times, Plaintiffs and the Hourly Workers did not have  
12 supervisory authority over any employees, did not possess the authority to hire or fire  
13 employees, did not possess authority to make critical job decisions with respect to any of  
14 Defendants' employees, did not direct the work of two or more employees, and did not  
15 exercise discretion and independent judgment with respect to matters of significance.  
16

17           98.    At all relevant times, Plaintiffs' and the Hourly Workers' primary duty was  
18 not the management of the enterprise in which they were employed or any recognized  
19 department of the enterprise.

20           99.    At all relevant times, Plaintiff Javier Garcia and the Supervisors were not  
21 paid on a salary basis.  
22

23           100.   At all relevant times, Plaintiff Javier Garcia and the Supervisors were not  
24 managers.

25           101.   At all relevant times, Plaintiff Javier Garcia and the Supervisors did not  
26 have supervisory authority over any employees, did not possess the authority to hire or  
27

1 fire employees, did not possess authority to make critical job decisions with respect to  
2 any of Defendants' employees, did not direct the work of two or more employees, and  
3 did not exercise discretion and independent judgment with respect to matters of  
4 significance.

5  
6 102. At all relevant times, Plaintiff Javier Garcia's and the Supervisors' primary  
7 duty was not the management of the enterprise in which they were employed or any  
8 recognized department of the enterprise.

9  
10 103. At all relevant times, From the beginning of Plaintiffs' and the Collective  
11 Members' employment through the present day, Defendants failed to properly  
12 compensate them for any of their overtime hours.

13 104. Defendants knew that – or acted with reckless disregard as to whether –  
14 their refusal or failure to properly compensate Plaintiffs and the Collective Members over  
15 the course of their employment would violate federal and state law, and Defendants were  
16 aware of the FLSA overtime wage requirements during Plaintiffs' and the Collective  
17 Members' employment. As such, Defendants' conduct constitutes a willful violation of  
18 the FLSA.

19  
20  
21 105. Defendants refused and/or failed to properly disclose to or apprise Plaintiffs  
22 and the Collective Members of their rights under the FLSA.

23 106. Therefore, in a given workweek, and during each and every workweek of  
24 Plaintiffs' and the Collective Members' employment with Defendants, Plaintiffs and the  
25 Collective Members were subject to Defendants' policy and practice of not paying one-  
26 and one-half times Plaintiffs' and the Collective Members' regular rates of pay.  
27

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1           107. In a given workweek, and during each and every workweek of Plaintiffs'  
2 and the Collective Members' employment with Defendants, Plaintiffs and the Collective  
3 Members worked more than 40 hours but were not paid the applicable one and one half  
4 times Plaintiffs' and the Collective Members' regular rates of pay for time they spent  
5 working in excess of 40 hours.  
6

7           108. Plaintiffs believe and therefore claim that Defendants subjected each and  
8 every Hourly Worker and Supervisor that they employed, including Plaintiffs and the  
9 Collective Members, to their policy and practice of not paying one- and one-half times  
10 Plaintiffs' and the Collective Members' regular rates of pay.  
11

12           109. Plaintiffs and the Collective Members are covered employees within the  
13 meaning of the Fair Labor Standards Act ("FLSA").  
14

15           110. Defendants refused and/or failed to properly disclose to or apprise Plaintiffs  
16 and the Collective Members of their rights under the FLSA.  
17

18           111. Defendants individually and/or through an enterprise or agent, directed and  
19 exercised control over Plaintiffs' and Collective Members' work and wages at all relevant  
20 times.  
21

22           112. Due to Defendants' illegal wage practices, Plaintiffs and the Collective  
23 Members are entitled to recover from Defendants compensation for unpaid overtime  
24 wages, an additional amount equal amount as liquidated damages, interest, and  
25 reasonable attorney's fees and costs of this action under 29 U.S.C. § 216(b).  
26  
27

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1           113. At all times material, Defendants paid Plaintiffs and the Collective  
2 Members at their regular rates of pay, regardless of whether they worked in excess of 40  
3 hours in a given workweek.

4           114. Defendants subjected all of their Hourly Workers and/or Supervisors,  
5 including Plaintiffs and the Collective Members, to their policy and practice of not  
6 paying their Hourly Workers and/or Supervisors one- and one-half times their regular  
7 rates of pay for time they spent working in excess of 40 hours in a given workweek, in  
8 violation of 29 U.S.C. § 207(a).  
9

10           115. At all material times, Plaintiffs and the Hourly Workers are and have been  
11 similarly situated, have had substantially similar job requirements and pay provisions,  
12 and are and have been subject to Defendants' decision, policy, plan, and common  
13 programs, practices, procedures, protocols, routines, and rules of willfully subjecting  
14 Plaintiffs and the Hourly Workers to their policy and practice of not paying their Hourly  
15 Workers one and one half times their regular rates of pay for time they spent working in  
16 excess of 40 hours in a given workweek, in violation of 29 U.S.C. § 207(a).  
17

18           116. At all material times, Plaintiff Javier Garcia and the Supervisors are and  
19 have been similarly situated, have had substantially similar job requirements and pay  
20 provisions, and are and have been subject to Defendants' decision, policy, plan, and  
21 common programs, practices, procedures, protocols, routines, and rules of willfully  
22 subjecting Plaintiff Javier Garcia and the Supervisors to their policy and practice of not  
23 paying their Supervisors one and one half times their regular rates of pay for time they  
24  
25  
26  
27



1 spent working in excess of 40 hours in a given workweek, in violation of 29 U.S.C. §  
2 207(a).

3 117. Plaintiffs' claims stated in this complaint are essentially the same as those  
4 of the Hourly Workers. This action is properly maintained as a collective action because  
5 in all pertinent aspects the employment relationship of Hourly Workers similarly situated  
6 to Plaintiffs is identical or substantially similar.  
7

8 118. Plaintiff Javier Garcia's claims stated in this complaint are essentially the  
9 same as those of the Supervisors. This action is properly maintained as a collective  
10 action because in all pertinent aspects the employment relationship of Supervisors  
11 similarly situated to Plaintiff Javier Garcia is identical or substantially similar.  
12

13 119. The Collective Members perform or have performed the same or similar  
14 work as Plaintiff.  
15

16 120. Defendants' failure to pay overtime compensation required by the FLSA  
17 results from generally applicable policies or practices and does not depend on the  
18 personal circumstances of Plaintiffs or the Collective Members.

19 121. While Plaintiffs have described Plaintiffs' and the Collective Members' job  
20 titles as Hourly Workers and/or Supervisors, the specific job titles, compensation rates, or  
21 precise job responsibilities of each Collective Member does not prevent collective  
22 treatment.  
23

24 122. All Collective Members, irrespective of their particular job requirements  
25 and job titles, are entitled to proper overtime wage compensation for all hours worked in  
26 excess of 40 in a given workweek.  
27

1           123. Although the exact amount of damages may vary among the Collective  
2 Members, the damages for the Collective Members can be easily calculated by a simple  
3 formula. The claims of all Collective Members arise from a common nucleus of facts.  
4 Liability is based on a systematic course of wrongful conduct by the Defendants that  
5 caused harm to all of the Collective Members.  
6

7           124. As such, Plaintiffs bring this FLSA overtime wage claim as a collective  
8 action on behalf of the following subclasses:  
9

- 10           1. **Hourly Workers:** All current and former individuals employed as  
11 Dishwashers, Kitchen Prep Workers, Cooks, Line Cooks, and  
12 Cashiers, (or in other positions with similar job titles or job duties),  
13 who were paid an hourly rate of pay, and who worked for any of  
14 Defendants' PT Noodles and/or PT Pho Express locations in a  
15 given workweek, three years before the Complaint was filed up to  
16 the present.
- 17           2. **Supervisors:** All current and former individuals employed as  
18 Supervisors or Assistant Managers (or in other positions with  
19 similar job titles or job duties), who were paid a salary, weekly  
20 rate, or other similar compensation rate of pay, and who worked  
21 for any of Defendants' PT Noodles and/or PT Pho Express  
22 locations three years before the Complaint was filed up to the  
23 present.

24           125. Defendants' unlawful conduct, as described in this Collective Action  
25 Complaint, is pursuant to Defendants' corporate policy or practice of minimizing labor  
26 costs by refusing and/or failing to properly compensate its employees according to the  
27 FLSA.

          126. Defendants are aware or should have been aware that federal law prohibited  
them from not paying their Hourly Workers and Supervisors—namely, Plaintiffs and the

1 Collective Members—an overtime premium wage for time spent working in excess of 40  
2 hours per given workweek.

3 127. Defendants’ unlawful conduct has been widespread, repeated, and  
4 consistent.

5 128. This action is properly brought and maintained as an opt-in collective  
6 action pursuant to 29 U.S.C. § 216(b).

7 129. Upon information and belief, the individuals similarly situated to Plaintiffs  
8 include more than one hundred (100) employees currently and/or formerly employed by  
9 Defendants, and Plaintiffs are unable to state the precise number of similarly-situated  
10 employees because that information is solely in Defendants’ possession, custody, or  
11 control, but it can be readily ascertained from their employment records and the records  
12 of Defendants’ payroll processor.

13 130. Notice can be provided to the Collective Members by First Class Mail to  
14 the last address known to Defendants, via email at the last known email address known to  
15 Defendants, and by text message to the last known telephone number known to  
16 Defendants.

17 **DAMAGES**

18 131. Plaintiffs reallege and incorporate by reference all allegations in all  
19 preceding paragraphs.

20 132. Plaintiffs and the Collective Members are entitled to recover overtime  
21 compensation for the hours they worked in excess of 40 per given workweek for which  
22  
23  
24  
25  
26  
27

1 they were not paid at the federally mandated one- and one-half times their regular rates of  
2 pay.

3 133. Plaintiffs and the Collective Members are also entitled to an amount equal  
4 to all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).

5 134. Plaintiffs and the Collective Members are also entitled to recover their  
6 attorney's fees and costs as required by the FLSA. 29 U.S.C. § 216(b).

7  
8 **COUNT ONE: FAIR LABOR STANDARDS ACT**  
9 **FAILURE TO PAY OVERTIME**

10 135. Plaintiffs reallege and incorporate by reference all allegations in all  
11 preceding paragraphs.

12 136. At all relevant times, Defendants did not pay Plaintiffs or the Collective  
13 Members one- and one-half times their regular rates of pay for time spent working in  
14 excess of 40 hours in a given workweek.

15 137. Defendants engaged in such conduct in direct violation of 29 U.S.C. §  
16 207(a).

17 138. As such, unpaid overtime wages for such time Plaintiffs and the Collective  
18 Members worked in excess of 40 hours per given workweek is owed to Plaintiffs and the  
19 Collective Members for the entire time they were employed by Defendants.

20 139. Defendants knew that – or acted with reckless disregard as to whether –  
21 their refusal or failure to properly compensate Plaintiffs and the Collective Members over  
22 the course of their employment would violate federal and state law, and Defendants were  
23 aware of the FLSA overtime wage requirements during Plaintiffs' and the Collective  
24  
25  
26  
27

1 Members' employment. As such, Defendants' conduct constitutes a willful violation of  
2 the FLSA.

3 140. Plaintiffs and the Collective Members are therefore entitled to  
4 compensation for their unpaid overtime wages at an hourly rate, to be proven at trial, plus  
5 an additional equal amount as liquidated damages, together with interest, reasonable  
6 attorney's fees, and costs.  
7

8 **WHEREFORE**, Plaintiffs, Sergio Lopez and Javier Garcia, individually, and on  
9 behalf of all other similarly situated persons, requests that this Court grant the following  
10 relief in Plaintiffs and the Collective Members' favor, and against Defendants:  
11

- 12 A. For the Court to declare and find that the Defendants committed one or  
13 more of the following acts:  
14 i. violated overtime provisions of the FLSA, 29 U.S.C. § 207, by  
15 failing to pay proper overtime wages;  
16 ii. willfully violated overtime provisions of the FLSA, 29 U.S.C. § 207;  
17  
18 B. For the Court to award damages in the amounts of all unpaid overtime  
19 compensation due and owing to Plaintiffs and the Collective Members for  
20 time they spent working in excess of 40 hours per given workweek;  
21  
22 C. For the Court to award compensatory damages, including liquidated  
23 damages pursuant to 29 U.S.C. § 216(b), in amounts to be determined at  
24 trial;  
25  
26 D. For the Court to award prejudgment and post-judgment interest on any  
27 damages awarded;

1 E. For the Court to award Plaintiffs and the Collective Members' reasonable  
2 attorneys' fees and costs of the action pursuant to 29 U.S.C. § 216(b) and  
3 all other causes of action set forth in this Complaint;

4 F. For the Court to provide reasonable incentive awards for each named  
5 Plaintiffs to compensate them for the time they spent attempting to recover  
6 wages for the Collective Members and for the risks they took in doing so;  
7 and  
8

9 G. Such other relief as this Court deems just and proper.  
10

11 **REQUEST FOR COLLECTIVE ACTION CERTIFICATION**

12 As to Count I of this Complaint, Plaintiffs request that the Court designate this  
13 action as a collective action on behalf of the FLSA Collective Members and promptly  
14 issue a notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the  
15 FLSA opt-in class, apprising them of the pendency of this action, and permitting them to  
16 timely assert FLSA claims in this action by filing individual Consent to Sue Forms  
17 pursuant to 29 U.S.C. § 216(b).  
18

19 **JURY TRIAL DEMAND**

20 Plaintiffs demand a trial by jury on all issues so triable.  
21

22 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of March, 2020.

23 BENDAU & BENDAU PLLC

24 By: /s/ Clifford P. Bendau, II  
25 Clifford P. Bendau, II  
26 Christopher J. Bendau  
27 Attorneys for Plaintiffs